
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telava Wireless, Inc.)	File Number EB-07-AT-110
)	
Owner of Antenna Structure)	NAL/Acct. No. 200832480003
ASR # 1050197)	
Fisk, Alabama)	FRN 0015598162

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 29, 2008

By the District Director, Atlanta Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Telava Wireless, Inc. (“Telava”), owner of antenna structure number 1050197 (“Tower”), located in Fisk, Alabama, apparently willfully and repeatedly violated Sections 17.51(a) and 17.57 of the Commission’s Rules (“Rules”)¹ by failing to exhibit red obstruction lighting from sunset to sunrise, and failing to notify the Commission of a change in ownership of an antenna structure. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”),² that Telava is apparently liable for a forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On June 7, 2007, in response to a complaint that the lights on the Tower were extinguished, an agent from the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”) consulted the Commission’s Antenna Structure Registration (“ASR”) database and found that International Communications Group, Inc., d/b/a Corban Networks (“ICG/Corban”) was listed as the Tower owner. The agent called the contact telephone numbers on record for ICG/Corban, but the numbers were disconnected. The agent contacted the nearest Federal Aviation Administration (“FAA”) Flight Service Station, found that no notice to airmen (“NOTAM”) had been issued for the lighting extinguishment,³ and had a NOTAM issued for the Tower. The agent later discovered that ICG/Corban had been dissolved in bankruptcy with no apparent transfer of ownership of the Tower.

¹ 47 C.F.R. §§ 17.51(a), 17.57.

² 47 U.S.C. § 503(b).

³ Section 17.48 (a) of the Rules states that “The owner of any antenna structure which is registered...[s]hall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna structure, not corrected within 30 minutes.” 47 C.F.R. § 17.48(a).

3. On December 5, 2007, an agent from the Atlanta Office inspected the Tower and found that the Tower lights were extinguished and that there was no electrical service to the Tower. There was no ASR number posted at the Tower base,⁴ and no other signage indicating the owner of the Tower. The agent received information from an individual living near the Tower, which led to the identity of the Tower's owner. On December 10, 2007, the agent from the Atlanta Office informed a contractor hired by Telava to restore the Tower lighting that it must have NOTAMs issued for the Tower until the lights are restored.⁵ That same day, the agent also notified an Operations Specialist with Telava that the Tower ownership information must be updated in the ASR database. On February 1, 2008, the agent from the Atlanta Office reminded the Operations Specialist with Telava that it must maintain a current NOTAM with the FAA until the Tower lighting is restored.

4. On February 11, 2008, the District Director of the Atlanta Office sent Telava a letter of inquiry ("LOI") regarding the Tower. On June 23, 2008, the Atlanta Office received a response to the LOI, dated May 15, 2008, signed by Telava's Chief Operating Officer ("response letter"). The documents provided with the response letter showed that Telava purchased the Tower on November 1, 2006. The response letter further stated that the Tower lights were extinguished when Telava purchased the Tower and had remained extinguished since that date due to Telava's failure to restore electrical service to the site. The response letter also stated that "Telava failed to notify the FAA regarding the structure light extinguishment due to the lack of knowledge to doing so. We have recently learned of this necessary requirement. Accordingly, all extinguishments have been noted." Finally, Telava stated that it mailed the necessary paperwork to update the ownership information for the tower on May 14, 2008.

5. On June 27, 2008, the agent from the Atlanta Office telephoned the original complainant who reported that the lights were still extinguished. No current NOTAM had been issued for the tower on that date, and the FAA's records showed that no NOTAMs had been issued on the tower within the month of June. The agent had another NOTAM issued for the tower on June 27, 2008. On July 9, 2008, the agent observed that electricity to the Tower had not yet been restored. As of July 29, 2008, ICG/Corban was still listed as the Tower owner in the ASR database.

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) of the Act has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁷

⁴ This constitutes a separate violation of Section 17.4 of the Rules, which requires the ASR number to be displayed in a conspicuous place readily visible near the base of the antenna structure. 47 C.F.R. § 17.4.

⁵ Between June and December 2007, an agent from the Atlanta Office periodically contacted the FAA and had NOTAMs issued for the Tower.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

7. Section 17.51(a) of the Rules requires that all red obstruction lighting be exhibited from sunset to sunrise unless otherwise specified.⁸ The Tower with ASR number 1050197 is required to have obstruction marking and lighting in accordance with FAA Circular Number 70/7460-F, Chapters 3, 4, 5, and 9. Specifically, the Tower is required to have daytime obstruction marking (painted) and to display red lights at night. On December 5, 2007 and July 9, 2008, an agent from the Atlanta Office observed that the Tower lighting was extinguished, because there was no electrical service to the Tower. In its May 15, 2008 response letter, Telava stated that the Tower lighting had been extinguished since it acquired the Tower on November 1, 2006, because power to the site had been disconnected. Telava also stated that it failed to have a NOTAM issued between November 1, 2006 and May 15, 2008. Although Telava and its representatives were informed of the NOTAM requirement on December 10, 2007 and February 1, 2008, Telava asserted in its May 15, 2008 response letter that it had only recently become aware of the NOTAM requirement. Despite Telava's assurances that it would maintain active NOTAMs for the Tower after May 15, 2008, an agent from the Atlanta Office confirmed with the FAA that no NOTAM had been issued for the Tower for the month of June 2008.

8. Section 17.57 of the Rules states that "[t]he owner of an antenna structure for which an Antenna Structure Registration Number has been obtained must...immediately notify the Commission using FCC Form 854 upon any change in structure height or change in ownership information." Telava stated that it purchased the Tower on November 1, 2006, and did not immediately notify the Commission of the ownership change. Telava was notified of the ownership information requirement on December 10, 2007, but, according to its letter response, did not file the required paperwork until May 14, 2008. However, the Commission has not received the paperwork and, as of July 29, 2008, ICG/Corban was still listed as the owner of the Tower in the ASR database.

9. Based on the evidence before us, we find that Telava apparently willfully and repeatedly violated Sections 17.51(a) and 17.57 of the Rules by failing to exhibit red obstruction lighting from sunset to sunrise and failing to notify immediately the Commission of a change of ownership of the Tower with ASR number 1050197.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failure to comply with prescribed lighting and/or marking is \$10,000, and failure to file required forms or information is \$3,000.⁹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Telava is apparently liable for a \$13,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Telava Wireless, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirteen dollars (\$13,000) for violations of Sections 17.51(a) and 17.57 of the Rules.¹¹

⁸ 47 C.F.R. § 17.51(a).

⁹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 17.51(a), 17.57.

Federal Communications Commission

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Telava Wireless, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Telava also will send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Atlanta Office, 3575 Koger Blvd., Suite 320, Duluth, GA 30096 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Telava Wireless, Inc. at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Douglas G. Miller
District Office
South Central Region
Enforcement Bureau